

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH No. L 2006090144

JORGE A.,

Claimant,

vs.

**FRANK D. LANTERMAN REGIONAL
CENTER,**

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on April 24, 2007, in Los Angeles, California. Jorge A. (Claimant) was represented by his mother, Jenny A., Claimant's authorized representative,¹ who was assisted by Spanish interpreter Susana Sardas. Frank D. Lanterman Regional Center (Service Agency or FDLRC) was represented by Julie A. Ocheltree, Esq., of Enright & Ocheltree, L.L.P.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on April 24, 2007.

ISSUE

The parties agreed that the sole issue to be decided is as follows:

Should Claimant's mother be allowed to act as Claimant's service coordinator?

¹ Claimant's and his mother's surnames are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 10-year-old male who is a client of FDLRC pursuant to a qualifying diagnosis of autism. He lives with his mother, Jenny A.
2. On May 31, 2006, Claimant's mother requested that she be allowed to act as Claimant's service coordinator.
3. In a letter dated July 17, 2006,² FDLRC denied Claimant's mother's request to be her son's service coordinator, stating:

[T]he Lanterman Act, at Welfare and Institutions Code section 4647, subdivision (c) addresses this possibility [of a parent acting as a service coordinator] as follows: "Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible." After thoughtful consideration, your request is denied for the reasons discussed below.

As you noted in your letter, you and Lanterman Regional Center have had different perspectives regarding the development of Jorge's Individual Program Plan and the services to be provided by the regional center. You believe that the regional center has cancelled services in "an unjust and rude manner" and that your son's "rights have not been respected." Your acting as the service coordinator for your son will not eliminate the fundamental differences of opinion between you and the regional center with regard to your son's service needs and it may make the situation more difficult for everyone.

Service coordination is a complicated process involving direct knowledge of resources (both vendored and generic), special education law and state and federal regulations. In addition, the regional center utilizes a special software program to write and track Interdisciplinary Notes as part of its contract with the Department of Developmental Services. This software is not accessible to non-employees. You would be obligated to meet statutory and practical obligations of a service coordinator for which you have neither the training nor the resources; this would likely be extremely frustrating to everyone involved.

[G]iven the fundamental differences in our approaches to your son's service needs and the practical difficulties presented, the Executive

² The July 17, 2006 letter was sent in English and in Spanish.

Director of the Frank D. Lanterman Regional Center does not agree to your acting as Jorge's program coordinator.

The regional center does support parents taking an active role in the service coordination process. I strongly encourage you to attend the Service Coordination and Advocacy Training offered by the Koch-Young Resource Center. This course may be of assistance to you as you continue to advocate on behalf of Jorge. I have taken the liberty to refer you to the next training series offered in Spanish. Mr. Edward Perez of Koch-Young Resource Center will be contacting you to facilitate your enrollment.

4. On August 28, 2006, Claimant's mother filed a Fair Hearing Request, contesting the Service Agency's denial of her request to be allowed to act as Claimant's service coordinator.

5(a). Melinda Sullivan (Sullivan), Associate Director of Client and Family Services, testified credibly on behalf of FDLRC. Her testimony, set forth below, is adopted as factual findings herein.

5(b). Sullivan's immediate supervisor is the Executive Director of FDLRC, Diane C. Anand (Director). Sullivan was involved in the decision to deny Claimant's mother's request to be her son's service coordinator. The Director did not agree to allow Claimant's mother to act as her son's service coordinator.

5(c). Service coordinators are required to work with families of children with developmental disabilities, to assist them with the development of an Individualized Program Plan (IPP) and to help them implement the IPP. Their duties include writing the IPP, helping to locate generic resources or regional center vendors providing specialized services, facilitating communication with other agencies, and entering interdisciplinary (ID) notes into the computerized case record. FDLRC has a case record model which must be followed. It uses a software system called "Virtual Chart" that allows ID notes to be saved on a computer server. FDLRC also uses a software program called "SANDIS" to enter and retain other types of database information such as quality assurance reports and special incident reports. Only regional center employees have access to Virtual Chart and SANDIS.

5(d). In order to be hired as a service coordinator at FDLRC, an applicant must have a bachelor's degree and one year of experience in service coordination. Within the first three months of employment, service coordinators must complete 48 hours of mandatory training focusing on service coordination activities. Thereafter, service coordinators must attend monthly in-service training related to service coordination activities and periodic training related to specialized tasks such as the use of the Virtual Chart program or preparation of Medicaid waivers which provide another funding stream from the federal government. Service coordinators must have

knowledge about vendors and other services available to regional center clients. This knowledge may have been acquired through previous job experience or obtained through training or through weekly meetings which facilitate the ongoing exchange of information. Additionally, service coordinators have access to a list of vendors on the SANDIS system. Service coordinators are required to keep track of the hours they work on each client chart. As part of the regional center's contract with the Department of Developmental Services, which in turn has a contract with the federal government through Medicaid, the State may be reimbursed for billings of certain service coordinator activities done on behalf of an individual. Pursuant to the contract with the federal government, a service coordinator must have at least a bachelor's degree, must have gone through training and must be an employee of the regional center in order to be eligible for billing reimbursement. Claimant's mother would not meet the criteria required by the federal government.

5(e). Case records and business records at FDLRC are in English.

5(f). Currently, FDLRC does not have any family members or friends of clients acting as service coordinators. Approximately 15 years ago, when the Lanterman Act was amended to allow family members to act as service coordinators, FDLRC had about eight family members acting as service coordinators (family service coordinators). The family service coordinators were all assigned to one service coordinator, an employee of FDLRC, who would meet with them on a regular basis to provide "backup" and direction on how to act as a service coordinator. At that time, ID notes were still hand-written, so family service coordinators could write and fax ID notes to the FDLRC employee, who could place the notes in the client's service records. However, if a family service coordinator wanted FDLRC to purchase services, the FDLRC employee needed to fill out the requisite form, go through the required internal process to obtain approval for the request for services, and communicate to the family service coordinator whether the services were authorized or denied. In performing these functions, the FDLRC employee was acting in a manner which was not very different from typical service coordinator functions. Consequently, over a two-year period, the families self-selected the traditional model of service coordination. The service coordinator encouraged the family members to continue to advocate and participate in the planning process, but performance of the actual activities related to service coordinating (e.g. purchasing services, quality assurance, etc.) fell back to the service coordinator.

5(g). Service coordinators have a narrow range of authority and must act within a regional center's funding guidelines and within the mandates of the Lanterman Act. A family service coordinator would still need to meet the obligations of any service coordinator. For example, with purchase of services, family service coordinators would still need to get the service authorized by FDLRC, just as any other service coordinator would be required.

5(h). FDLRC and Claimant's mother have had many differences of opinion regarding what services would be best for Claimant.³ If Claimant's mother became his service coordinator, she would still be required to follow the rules FDLRC is obligated to follow. Her acting as service coordinator would not resolve the differences of opinion between her and FDLRC.

5(i). FDLRC encouraged Claimant's mother to take Service Coordination and Advocacy Training. This training is a free, four or five week series of classes that orient family members on how FDLRC functions, how they as family members can work through that system and advocate for their child, and how other agencies fit into the puzzle. The training is offered several times per year at various locations, with at least one session per year offered in Spanish.

6. FDLRC is currently funding socials skills therapy and 66 hours per month of respite in lieu of an after- school program for Claimant.

7. Claimant is eligible for Medicaid waiver credit, but FDLRC had to remove him from that program because his chart was not in compliance with Medicaid requirements. In order to be in the Medicaid waiver program, a client's file is audited annually. The client's chart must be current and contain updated medical records and school district records. FDLRC has been unable to hold regularly scheduled and successful meetings with Claimant's mother or to obtain her signature on certain documents, as mandated by the Medicaid program. For example, when she met with her son's service coordinator in October 2006, Claimant's mother refused to sign consents for release of Claimant's medical and school records.

8. All letters from FDLRC to Claimant's mother are sent in English and in Spanish. Claimant's mother speaks only Spanish. Claimant's father had previously helped Claimant's mother translate any English documents. However, Claimant's parents are currently going through divorce proceedings, and Claimant's father does not provide translation for Claimant's mother anymore.

9(a). Claimant's mother insisted that she should be allowed to act as her son's service coordinator because, in addition to her numerous disputes with FDLRC, she also believes FDLRC has refused to comply with a prior order of an Administrative Law Judge (ALJ). However, Claimant's mother misunderstood and continues to misunderstand the ALJ's order.

³ In support of her request to act as her son's service coordinator, Claimant's mother noted numerous other instances where she disagreed with Claimant's service coordinators and with their supervisor, Candice LaMere (LaMere). The issue of which party was correct in each of these instances is not relevant, and will not be discussed, herein.

9(b). In the prior case, following a fair hearing, the ALJ issued a January 25, 2006 decision ordering FDLRC to fund an evaluation to determine whether an in-home discrete trial training (DTT) program for Claimant was warranted. In compliance with the ALJ's order, FDLRC engaged Vista Psychological Center, Inc. (Vista) to conduct the evaluation to determine whether DTT was warranted. Following the evaluation, Vista's report stated that Claimant "would not benefit from DTT." Instead Vista recommended that Claimant receive Planned Activities Training, Guided Compliance, Social Stories, and Applied Behavior Analysis. FDLRC subsequently offered these recommended services to Claimant on numerous occasions, but Claimant's mother refused, insisting that FDLRC should provide DTT.

10(a). Upon receipt of the Vista report, Claimant's mother requested that FDLRC provide a written Spanish translation. That request was denied. Instead, FDLRC had one of its psychological consultants who speaks Spanish meet with Claimant's mother, translate the Vista report orally and provide a consultation for Claimant's mother regarding the findings.

10(b). Claimant's service coordinator, who speaks Spanish, and LaMere were present at that meeting. They offered to conduct Claimant's IPP on that same day, but Claimant's mother declined. She agreed to conduct the annual review for the Medicaid waiver program, but would not sign the annual review form that the Medicaid waiver program requires.

11. There is no current IPP in place. The IPP was due to be completed in January 2007, but Claimant's service coordinator has been unable to get Claimant's mother to confirm a date to meet with him.

12. Claimant's mother wants to be trained to "be an advocate" for her son. She insisted that the service coordinator "has too many cases" but that she has "no obligations" other than her son. She has attended courses to train her in cardiopulmonary resuscitation and providing in-home care.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of his mother's request to allow his mother to act as his service coordinator is denied. (Factual Findings 1 through 12.)

2. Where a change in the status quo is sought, the party seeking the change has the burden of proving that a change is necessary. (See Evid. Code §§ 115 and 500.) Here, Claimant seeks to change the status quo by having his mother act as his service coordinator, and therefore he has the burden of proof. Claimant has not met his burden of proof.

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3. Welfare and Institutions Code section 4647 states in pertinent part:

(a) [S]ervice coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

(b) The regional center shall assign a service coordinator who shall be responsible for implementing, overseeing and monitoring each individual program plan. The service coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide service coordination services. . . . No person shall continue to serve as a service coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as service coordinator.

(c) Where appropriate, a consumer or the consumer's parents or other family members, legal guardian, or conservator, may perform all or part of the duties of the service coordinator described in this section if the regional center director agrees and it is feasible.

(d) If any person described in subdivision (c) is designated as the service coordinator, that person shall not deviate from the agreed-upon program plan and shall provide any reasonable information and reports required by the regional center director.

(Emphasis added.)

4(a). The Service Agency maintains that Claimant's mother should not be allowed to act as Claimant's service coordinator because the requirements of Welfare and Institutions Code section 4647, subdivision (c), have not been met; that is: (1) the regional center director did not agree, and (2) it is not feasible. This argument was supported by the evidence presented at the fair hearing.

4(b). In this case, the Executive Director of FDLRC does not agree to Claimant's mother serving as his service coordinator. It does not appear that the denial was based on any abuse of discretion, but on several factors taken into

consideration, including Claimant's mother's lack of the requisite education, training and experience and the impracticality of having her serve as service coordinator. This lack of agreement, by itself, supports FDLRC's denial of Claimant's mother's request to act as her son's service coordinator.

4(c). Even if an agreement could be reached, a parent's acting as a service coordinator must be "feasible." In this case, the evidence established that it is not feasible for Claimant's mother to serve as his service coordinator. As noted above, she does not have the education, training and experience required. Additionally, the current case record model does not provide a feasible means for Claimant's mother to maintain ID notes, since it requires the use of software, in English, which is accessible only to regional center employees. Furthermore, Claimant's mother has had numerous disputes with FDLRC, many involving LaMere, with whom Claimant's mother would still be expected to interact if she was allowed to act as a service coordinator. Moreover, Claimant's mother has exhibited a misunderstanding of what FDLRC is required to do under the Lanterman Act and pursuant to an ALJ's order, and has demonstrated that she is willing to forego any services for her son if the services offered are not specifically the type she desires. This bodes poorly for any type of cooperative and productive relationship between Claimant's mother and FDLRC. While Claimant's mother may perform well as an advocate for her son, it does not appear feasible that she could work as a liaison between her son and the regional center, which is the role of service coordinators.

ORDER

The Service Agency's denial of Claimant's request to have his mother act as his service coordinator is sustained. Claimant's appeal is denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: May 3, 2007

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings